



# AIL CENTRE FOR PERSONAL LAWS NEWSLETTER



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# About the Centre

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## Introduction:

The AIL Centre for Personal Laws (ACPL) is an initiative established to advance research in the field of personal laws. Recognizing the complexity of personal laws that govern marriage, divorce, inheritance, and family relations across diverse communities, the Centre aims to foster a deeper understanding of this critical legal framework. The Centre recognises the paramount importance of understanding and developing personal laws in a nation characterized by remarkable cultural and religious diversity and has been established to foster research in the field of personal laws in India.

Through ACPL, we seek to create a vibrant platform for inquiry and discourse, encouraging collaboration among students, scholars, legal practitioners, and community leaders.



## Meet the Team:

### **Row - 1( Right to Left)**

Rebecca Kanwar,  
Mehak Jamwal - Student Coordinator  
Dr. Alamdeep Kaur - Faculty  
Coordinator  
Ms. Shivanshi Thakur - Faculty  
Coordinator  
Tamanna Mittal

### **Row- 1(Right to Left)**

Sourav Singh  
Srishti Singh - Vice Student Coordinator  
Shagun Sharma  
Tanea Mohla  
Anushka Verma

### **Other Members**

Yashi panwar  
Amishi Shukla  
Khushita Garg

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# INTER-BATCH GROUP DISCUSSION COMPETITION

VOICES, RIGHTS AND REFORMS- ACPL's LEAD ACTIVITY

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## About the Activity

The AIL Centre for Personal Laws (ACPL) successfully organized the Inter-Batch Group Discussion Competition on April 3, 2025, at 2:15 p.m. in the Multi-Purpose Hall (MPH). The event aimed to foster intellectual debate and critical thinking among students, providing them with an opportunity to articulate their perspectives on contemporary Personal Law issues.

The competition saw participation from all batches, with each team engaging in rigorous discussions on topics assigned through a draw of lots. The event was structured in two rounds—a Preliminary Round to determine the finalists, followed by the Final Round, where the best teams contended for the championship. The discussion was conducted strictly in English, ensuring a professional and structured debate.



The Inter-Batch Group Discussion Competition evaluated critical thinking, argumentation, and dialogue skills.

- **Competition Rounds:**

- 1. **Preliminary Round:**

- 10-minute team discussions.
    - Bells at 7 and 10 minutes.
    - Judged on knowledge, reasoning, and teamwork.
    - Top two teams moved to the Final Round.

- 2. **Final Round:**

- 15-minute discussion: "Uniform Civil Code is not a solution for social harmony."
    - Bells at 10 and 15 minutes.
    - Best argument team won.

- **Results and Awards:**

- **Finalists:** Third Year Team, Second Year Team.
- **Winners:** Third Year Team (₹3000 and Certificate).
- **Best Speaker:** Samya (2287) (Cash Prize and Certificate).



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# From Decriminalization to Recognition: The Queer Citizen and the Law Today

- Anushka Verma (2254)

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Once just a collection of letters, LGBTQIA+ has come to stand for a diverse spectrum of identities- Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and others who exist outside heteronormative frameworks. But beyond terminology, it represents a powerful narrative of visibility, resistance, and belonging- one that is steadily reclaiming space in India's legal and social imagination.<sup>1</sup>

Often dismissed as a modern or urban elitist phenomenon, queerness in fact has deep and undeniable roots in Indian history. As mythologist Dr. Devdutt Pattanaik notes, ancient Indian languages had over fifty words to describe gender and sexual diversity with terms like *napumsaka*, *klība*, *kinnara*, *pedi*, and *pandaka* appearing in revered texts such as the Vedas, Puranas, Kama Shastra, Natya Shastra, and even Buddhist Pitakas and Jain Agamas. These identities may have been socially marginalised in some contexts, but they were not criminalised in the rigid, punitive way later introduced by colonial laws. The idea that queerness was "unnatural" was an imposition, an alien concept, brought into Indian jurisprudence through the British colonial regime, particularly via Section 377 of the Indian Penal Code (1861), which equated non-heteronormative sexual expression with criminality based on Victorian and Judeo-Christian moral codes. In the past decade however, Indian courts have slowly but meaningfully chipped away at these colonial residues<sup>2</sup>.

The first major breakthrough came in *NALSA v. Union of India*, (2014) 5 SCC 438, where the Supreme Court recognised the rights of transgender persons and affirmed that gender identity is an essential facet of the right to life under Article 21. This was followed by the landmark *Puttaswamy* judgment<sup>3</sup>, which upheld the right to privacy as a fundamental right and implicitly protected sexual orientation. In 2018, *Navtej Singh Johar v. Union of India*<sup>4</sup> marked the long-awaited decriminalisation of consensual same-sex relations, as the Supreme Court read down Section 377. The judgment was celebrated not just for its legal impact, but for its emphatic recognition that LGBTQIA+ individuals are entitled to dignity, equality, and full citizenship under the Constitution<sup>5</sup>.

The same year, in *Shafin Jahan v. Asokan K.M.*<sup>6</sup>, the Court reiterated that the right to choose one's partner lies at the heart of liberty under Article 21, emphasising that neither social norms nor parental consent can override adult autonomy. This principle also resonated in *Asha Ranjan v. State of Bihar*<sup>7</sup>, and *Shakti Vahini v. Union of India*<sup>8</sup>, where the apex court protected inter-religious and inter-caste unions from coercion, harassment, and honour-based violence. Though not queer-specific, these rulings powerfully affirm the constitutional guarantee of decisional autonomy in intimate relationships- a principle foundational to LGBTQIA+ rights.

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A significant jurisprudential development followed in *Deepika Singh v. Central Administrative Tribunal*<sup>9</sup>, where the bench led by Dr. D.Y. Chandrachud held that familial benefits like

maternity leave could not be denied merely because a woman did not belong to a “traditional” family unit. The Court observed that legal and societal notions of family, typically imagined as a heterosexual couple with children, ignore the realities of single parents, stepfamilies, unmarried partnerships, and queer relationships. Recognising that familial structures are fluid and varied, the Court stressed the need for a policy framework that accommodates such diversity. This marked a shift from tolerating non-normative families to actively affirming their legitimacy in welfare jurisprudence<sup>10</sup>.

In 2023, the Supreme Court, in *Supriyo v. Union of India*<sup>11</sup>, declined to legalise same-sex marriage, holding that it was a matter for the legislature to decide. Nevertheless, the Court’s recognition that family is not limited to “blood and marriage” relationships was crucial. While the petitioners did not succeed on the issue of marriage equality, the judgment affirmed that same-sex couples have the right to cohabit and form families deserving of equal protection under law.

It is in this legal context that the recent ruling of the Madras High Court in *M. A v. Superintendent of Police, Vellore*<sup>12</sup>, assumes particular significance. Herein, a habeas corpus petition was filed by a woman seeking the release of her same-sex partner, who had been forcibly confined by her family and subjected to coercive religious rituals intended to change her sexuality. The Court’s response was not only immediate and protective, but also profoundly constitutional.

In granting relief, the division bench of Justices G.R. Swaminathan and V. Lakshminarayanan went beyond the facts of the case and addressed the broader question of what constitutes a family in the eyes of the law.

The Court here relied on *Deepika Singh v. Pgimer, Chandigarh*<sup>13</sup>, wherein the Supreme Court had opined that the predominant understanding of the concept of ‘family’ both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children, ignores the fact that many circumstances lead to a change in one’s familial structure, and that many families do not conform to this expectation to begin with. “A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the “mother” and the “father”) of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination.”

The Court observed that marriage is not the sole foundation of familial life and that individuals have the right to form “chosen families” based on companionship and care, even outside the institution of marriage. What adds doctrinal weight to the ruling is the Court’s reliance on not only *Supriyo* but also other Supreme Court decisions



that strongly upheld the autonomy of adult relationships. Citing Shakti Vahini, Asha Ranjan, and Shafin Jahan, the Madras High Court noted that although these cases dealt with inter-caste and inter-religious marriages, the underlying principles- individual autonomy, personal liberty, and protection from familial interference- apply with equal force to same-sex relationships. These judgments collectively reiterate that the right to choose one's partner is part of the right to life and liberty under Article 21, and this choice cannot be overridden by societal or familial pressures.

By applying these precedents to same-sex relationships, the Madras High Court has sent a strong message: constitutional protection of personal relationships must extend beyond conventional boundaries of caste, religion, and gender.

This judgment marks a quiet but firm expansion of personal law in India- one that moves away from rigid, codified norms and toward a more inclusive, rights-based framework<sup>14</sup>. It also reveals the capacity of constitutional morality to correct historical wrongs and push the law toward greater justice. While same-sex marriage remains outside the reach of statutory recognition, judgments like this one offer a way forward by validating lived realities and protecting the fundamental autonomy of queer individuals.

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# Secret Conversations as Evidence: Shifting Privacy Boundaries in Matrimonial Law

- Khushita Garg (2391)

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In an age where smartphones record more than just memories, the Supreme Court of India has made a defining statement: secretly recorded conversations between spouses can be admitted as evidence in court. The judgment in *Vibhor Garg v. Neha*<sup>1</sup>, delivered on July 14, 2025, stands at the intersection of privacy, marriage, technology, and justice. It answers a long-standing question—can a partner use covert recording from within the home to substantiate a claim of cruelty in divorce proceedings?<sup>2</sup>

## The Case in Brief

Vibhor Garg and Neha were married in 2009 and had a daughter in 2011. Citing cruelty, the husband filed for divorce in 2017. During the proceedings before the Family Court in Bathinda, he sought to submit audio recordings of conversations with his wife—captured without her knowledge—as evidence. These recordings were from mobile memory cards and CDs spanning the years 2010 to 2016. The Family Court permitted their submission, relying on Sections 14 and 20 of the Family Courts Act, 1984, which allow family courts to admit any evidence that helps resolve disputes. However, the Punjab and Haryana High Court reversed this in 2021, citing violation of the wife’s right to privacy under Article 21 of the Constitution. The matter then reached the Supreme Court, which overturned the High Court’s ruling.

## The Court’s Analysis

At the heart of the case was the interp-

-retation of Section 122 of the Indian Evidence Act, 1872 which protects communications between spouses from disclosure in court unless consent is given. However, the section contains a crucial exception: in suits between spouses, such as divorce cases, the bar on disclosure does not apply. The Supreme Court held that Section 122’s protection does not prevent a spouse from presenting secretly recorded conversations in matrimonial proceedings. In fact, when the marriage is already in dispute, the rationale for preserving marital confidentiality loses ground. As the Court observed, “snooping between partners is an effect, not a cause, of marital disharmony.” If the trust is broken enough for one spouse to start recording the other, the privacy the law seeks to protect has already been compromised<sup>3</sup>.

The judgment also drew on the evidentiary value of such recordings. Citing earlier decisions like *Yusufalli Esmail Nagree v. State of Maharashtra*<sup>4</sup> and *R.M. Malkani v. State of Maharashtra*<sup>5</sup>, the Court reaffirmed that evidence gathered even through covert means is not per se inadmissible, provided its relevance, accuracy, and authenticity are established. In *Malkani*, for instance, a conversation recorded using a hidden microphone was held admissible despite the lack of consent, because it was relevant and reliable<sup>6</sup>.

## Privacy and Fair Trial: A Delicate Balance

While acknowledging that the right to privacy is a fundamental right under

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Article 21 of the Constitution, as affirmed in *K.S. Puttaswamy v. Union of India*<sup>7</sup>, the Court emphasized that privacy is not absolute. It must be balanced against another core constitutional value: the right to a fair trial. In matrimonial cases where allegations like cruelty are levelled, the very nature of the dispute involves private communications that would otherwise remain undocumented. Without recordings or direct evidence, many genuine grievances would become impossible to prove. The Court also noted that Section 65B of the Evidence Act, 1872 which governs the admissibility of electronic evidence, provides a structured mechanism to admit such recordings, so long as procedural safeguards are followed. Thus, modern technology, rather than being viewed suspiciously, can serve justice if handled with care<sup>8</sup>.

### **Criticism and Caution**

Despite the clarity of the legal position, the judgment is not without its critics. Women's rights activists and privacy advocates have raised concerns that the ruling could lead to an increase in digital surveillance within households. In relationships where power imbalances exist, especially due to economic or gender disparities, covert surveillance could become a tool of harassment or coercion. In this regard, the Court was assisted by amicus curiae Vrinda Grover, who urged caution and recommended that family courts exercise strict discretion while admitting such evidence. She emphasized the need to avoid incentivizing surveillance culture in matrimonial relations and pointed to the Delhi Family Court Rules, 2024, which introduced privacy protections for sensitive evidence<sup>4</sup>.

Nonetheless, the Supreme Court reasoned that such safeguards already exist within judicial discretion and forensic processes. It left room for

further guidelines in future cases but maintained that relevant evidence should not be excluded merely because it invades one spouse's subjective sense of privacy—especially when that evidence is crucial for determining cruelty or abuse<sup>5</sup>.

### **Legal Implications and Precedents**

This decision harmonizes multiple legal doctrines: the evidentiary framework under Sections 122 and 65B of the Indian Evidence Act, 1872, the liberal approach of Section 14 of the Family Courts Act, 1984 and the proportionality doctrine developed in *Puttaswamy*. The Court clarified that the term “communication” in Section 122 of the Indian Evidence Act, 1872, does not mean a “conversation” in the broad sense—it refers to messages or information conveyed by one spouse to another. Therefore, the recording of a conversation (even without the speaker's knowledge) does not necessarily trigger the privilege against disclosure, especially in suits between spouses<sup>6</sup>. This also sets a precedent for lower courts dealing with similar evidence in family disputes. It urges a shift from rigid application of outdated privacy norms to a more balanced, context-specific approach rooted in constitutional values and the evolving role of technology in litigation<sup>7</sup>.

### **Conclusion**

The Supreme Court's ruling in *Vibhor Garg v. Neha* marks a watershed moment in the evolving landscape of Indian matrimonial law. By affirming the admissibility of secretly recorded conversations between spouses as evidence, the Court has redefined the contours of privacy within the marital relationship, especially when that relationship is subject to judicial scrutiny. This judgment acknowledges that the traditional notions of absolute spousal privacy must yield to the imperative of uncovering truth in litigation<sup>8</sup>. It sends a clear message that privacy is not an inviolable shield behind which misconduct can be



hidden, particularly when one spouse alleges abuse, cruelty, or deception.

This progressive interpretation reflects a broader shift in judicial thinking—one that aligns with the realities of modern technology and the changing dynamics of interpersonal relationships. Secret recordings, once viewed with suspicion, are now recognized as sometimes being the only recourse for a vulnerable spouse to substantiate their claims. However, while the decision enhances the evidentiary toolkit available to litigants, it also places a burden on courts to scrutinize such recordings carefully to ensure they are authentic, relevant, and not a result of entrapment or coercion<sup>9</sup>. The judiciary must walk a fine line between upholding the right to privacy and preventing it from becoming a barrier to justice. This decision is a timely and necessary recalibration of that balance—one that privileges fairness, accountability, and the integrity of judicial proceedings over a rigid, outdated conception of marital privacy<sup>10</sup>.

The admissibility of secret recordings in matrimonial disputes represents a nuanced yet progressive shift in the judicial interpretation of evidence law. Traditionally, the notion of privacy within the marital sphere was treated as sacrosanct, and any intrusion—particularly

through clandestine recordings—was considered an affront to the dignity of the marital relationship. However, courts are increasingly recognizing that such an absolutist conception of privacy can inadvertently shield abusive or deceptive conduct, thereby denying justice to vulnerable spouses.

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# Three Words and a Thousand Silences: The Human Story Behind The Triple Talaq Verdict

Nitya Pathak (24062)

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*“The fight for gender equality is not a battle between men and women. It is a battle between the past and the future.”*

— Justice D.Y. Chandrachud

In 2017, India’s Supreme Court delivered a judgment that would forever alter the landscape of Muslim personal law and women’s rights in India. It declared the practice of Talaq-e-Biddat, also known as instant Triple Talaq, unconstitutional. This was not merely a legal triumph, it was the untold story of thousands of women like Shayara Bano, left behind in an instant, often over a phone call, a WhatsApp message, or a handwritten note<sup>1</sup>. Muslim women had been locked into a system for decades that allowed husbands to unilaterally and irrevocably end a marriage without the wife’s consent or even her knowledge. The 2017 verdict became a beacon of hope in their long, isolated battle for justice, equality, and dignity.

Triple Talaq allowed a Muslim man to divorce his wife instantly by saying “talaq” three times in one sitting, without requiring legal cause, mutual consultation, or reconciliation. While most Islamic scholars had condemned it as un-Islamic and ethically problematic, it continued to be practiced widely in South Asian Muslim communities, including in India<sup>2</sup>. What made the practice even more painful was not just the lack of procedure, but the fact that it often left women homeless, socially

ostracized, and financially broken. Most did not have the emotional strength or legal resources to fight back.

The case of Shayara Bano<sup>3</sup> was a watershed moment. A resident of Uttarakhand, she was divorced through instant Triple Talaq after years of enduring domestic abuse. Her petition was not merely a plea for personal justice it was a courageous appeal for the fundamental rights of Muslim women across the country. She approached the Supreme Court, arguing that the practice violated her right to equality (Article 14), protection against discrimination (Article 15), and the right to live with dignity (Article 21). Her case quickly became a constitutional matter, drawing attention from religious bodies, activists, legal experts, and political stakeholders.<sup>4</sup>

In a landmark 3:2 majority ruling, the Supreme Court declared instant Triple Talaq unconstitutional. While the judges differed in their reasoning, they unanimously upheld one key principle: the practice was arbitrary, infringed upon the fundamental rights of women, and did not qualify as an essential religious practice under Article 25 of the Constitution. The Court further observed that, even within Islamic jurisprudence, Talaq-e-Biddat was regarded by many schools of thought as undesirable or sinful. The message was unequivocal, religious personal laws cannot override the Constitution when they violate the principles of justice, fairness, and human dignity.

This verdict was not just a legal victory;

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For the first time, the highest court in the land had formally acknowledged and addressed the long-standing suffering of Muslim women. Yet, the battle didn't end there. In 2019, the government passed the Muslim Women (Protection of Rights on Marriage) Act, which criminalized the practice. The law made pronouncing instant Triple Talaq a cognizable and non-bailable offence, punishable by up to three years in prison. It also provided for maintenance to the wife and custody of minor children.

While many welcomed this move as necessary to deter misuse, others raised concerns. Critics argued that criminalizing the practice could be counterproductive, why send the husband to jail and leave the woman unsupported when civil remedies could be more helpful? Some also saw it as politically motivated, alleging that the law was more about targeting a community than protecting its women. However, one cannot ignore that for decades, Muslim women had demanded protection, and the state was finally responding, even if imperfectly<sup>5</sup>.

At the heart of the debate lies a critical question: Can religious freedom co-exist with gender equality? The Indian Constitution says yes, but only so long as religious practices don't infringe on other fundamental rights. Triple Talaq failed this constitutional test. It granted unchecked power to men while denying women legal protection, emotional security, and often, economic independence.

Ironically, several Muslim-majority nations had reformed this aspect of personal law long ago. Pakistan outlawed instant Triple Talaq in 1961. Countries like Egypt, Indonesia, Tunisia, and Bangladesh require due process and conciliation before divorce. Indian Muslim women were being denied the same protections their counterparts in Islamic nations

already enjoyed. This wasn't a betrayal of Islam, it was, in many ways, a return to its core values of justice and compassion. The 2017 judgment and the 2019 legislation were significant steps, but they were just the beginning. A large number of Muslim women, especially in rural or marginalized areas, still remain unaware of their rights. Legal aid, access to justice, and social support remain severely lacking.

If real change is to happen, India must go beyond the courtroom. It must invest in legal literacy, gender sensitization, community outreach, and women's education. Laws alone cannot change attitudes but they can spark movements, and that's exactly what the Triple Talaq verdict has done<sup>6</sup>.

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# Exploring the concept of Judicial Activism and Judicial Restraint in the evolution of Personal Laws

Priyadarshani Tripathi (2318)

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Personal laws in India refer to the legal norms governing the personal affairs of individuals based on their religion, which includes marriage, divorce, inheritance, and adoption. The evolution of these laws reflects the complex interplay between codification and customary practices, which are shaped by historical, cultural, and social dynamics. The tension between judicial activism and judicial restraint has been impacting the evolution of personal laws since historical times, which have been governing the personal affairs of individuals based on their religious affiliations<sup>1</sup>.

The roots of personal laws in India can be traced back to ancient texts, including the Vedas and the Dharma Shastras, which laid down the moral and ethical codes for different communities. These texts were not uniform and varied across regions and communities. The diverse cultural landscape of India has contributed to the multiplicity of personal laws, with each religious community having its own set of norms.

During the colonial era, the British introduced a legal framework that aimed to systematize these laws, leading to the codification of personal laws<sup>2</sup>. The Indian Penal Code of 1860 and the Indian Succession Act of 1925 were among the first efforts to create a uniform legal structure. However, these laws often coexisted with customary practices, leading to a dual legal system that remains relevant today.

## **Codification vs. Customary Practices:**

The Evolution of Personal Laws in India. Codification refers to the process of consolidating and systematically arranging laws into a written code. In India, the codification of personal laws began in the mid-20th century, primarily after independence in 1947<sup>3</sup>. The Constitution of India, enacted in 1950, recognized the need for personal laws while ensuring the right to equality and non-discrimination.

- **Hindu Personal Law:** The Hindu Marriage Act of 1955, Hindu Succession Act of 1956, and Hindu Adoption and Maintenance Act of 1956 were pivotal in codifying Hindu personal laws. These acts reformed practices such as polygamy and inequitable inheritance norms, aligning them with values of gender equality.

- **Muslim Personal Law:** The Muslim Personal Law (Shariat) Application Act of 1937 laid the groundwork for the codification of Muslim personal laws in India. However, unlike Hindu laws, Muslim personal laws have not been significantly codified post-independence, leading to a reliance on customary practices and interpretations of Islamic jurisprudence.

- **Christian and Parsi Personal Laws:** The Indian Divorce Act of 1869 and the Parsi Marriage and Divorce Act of 1936 are examples of codified laws governing Christians and Parsis in India guiding towards marriage, divorce, and inheritance<sup>4</sup>.

Customary practices continue to play a significant role in shaping personal laws in India, despite the codification

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of laws. While codified laws seek to provide uniformity and protect individual rights, customary practices often reflect the realities and values of specific communities. These practices are often deeply rooted in cultural traditions and can vary widely even within the same religious community, especially in rural areas where codified laws may not be well understood or enforced. For example, the practice of child marriage persists in certain communities, despite being illegal under the Prohibition of Child Marriage Act, 2006<sup>5</sup>.

Indian courts have often recognized customary practices, provided they do not violate fundamental rights. For instance, the Supreme Court in the case of *Khushboo v. Kanniammal* (2010)<sup>6</sup> acknowledged the validity of customary practices concerning marriage and divorce among various communities. Customary practices often perpetuate gender inequalities. Women may find themselves at a disadvantage in matters of inheritance and divorce, as traditional customs may favour male heirs. Many communities are resistant to the codification of personal laws, viewing it as an imposition of external values. This resistance can hinder the implementation of progressive reforms aimed at promoting gender equality and justice.

India's legal system embodies legal pluralism, wherein multiple legal systems coexist, this leads to confusion and inconsistency. Judicial Activism of Indian judiciary has played a crucial role in addressing the tensions between codification and customary practices. In the landmark case of, *Vishaka v. State of Rajasthan* (1997), have emphasized the need to implement constitutional guarantees of equality and justice, even in the face of customary norms.

### **The Concept of Judicial Activism and Judicial Restraint**

Judicial activism refers to a judicial

philosophy where judges take a proactive role in interpreting the law and shaping public policy, often going beyond the traditional boundaries of their role. This approach is characterized by a willingness to challenge established norms, interpret the law expansively, and address societal issues through judicial pronouncements.

In contrast, judicial restraint is a judicial philosophy that emphasizes and imparts a more limited role for the judiciary. Proponents of judicial restraint believe that judges should exercise caution in interpreting the law, deferring to the legislative and executive branches of the government and avoiding the imposition of their own personal views and interpretations on policy matters.

### **The Evolution of Judicial Approaches in Personal Laws**

The Indian judiciary has witnessed a dynamic interplay between judicial activism and judicial restraint in the realm of personal laws. In the initial years after India's independence where early judicial restraint was seen, the judiciary often adopted a more restrained approach when it came to personal laws. The courts were hesitant to interfere with the established customs and practices of various religious communities. Emergence of Judicial Activism: Over time, the judiciary began to take a more proactive stance, particularly in addressing issues of gender equality and individual rights within the realm of personal laws. In the case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) and *Danial Latifi v. Union of India* (2001), showcased the judiciary's willingness to challenge the status quo and push for progressive reforms.

Balancing Judicial Approaches: In recent years, the Indian judiciary has attempted to strike a balance between judicial activism and judicial restraint in personal law cases. While upholding the fundamental rights enshrined in

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the Constitution, the courts have also recognized the need to respect the autonomy of religious communities and their customary practices.

### **The Interplay Between Judicial Activism and Judicial Restraint in Personal Laws**

**Gender Equality and Justice:** The judiciary has often been at the forefront of promoting gender equality and ensuring justice for women within the realm of personal laws. Cases such as *Vishaka v. State of Rajasthan* (1997) and *Shayara Bano v. Union of India* (2017) have highlighted the courts' willingness to challenge discriminatory practices and uphold the constitutional principles of equality.

**Individual Rights and Autonomy:** The courts have grappled with the tension between individual rights and the autonomy of religious communities in matters of personal laws. Judgments like *Aruna Ramachandra Shanbaug v. Union of India* (2011) and *Indian Young Lawyers Association v. State of Kerala* (2018) have sought to balance these competing interests.

**Interpretation of Religious Texts and Customs:** The judiciary has had to navigate the complex task of interpreting religious texts and customary practices, often drawing criticism for overstepping its boundaries or being perceived as interfering with the internal affairs of religious communities.

**Separation of Powers and Judicial Deference:** The principle of separation of powers has been a key consideration, with the courts sometimes deferring to the legislative branch's authority to enact reforms in personal law matters.

### **Case Studies: Judicial Activism and Restraint in Personal Laws**

***The Shah Bano Case (1985)***<sup>6</sup>: In this landmark case, the Supreme Court ruled in favour of a Muslim woman's right to seek maintenance from her estranged husband, emphasizing the

need for gender justice. However, the subsequent legislative response, the Muslim Women (Protection of Rights on Divorce) Act, 1986, was seen as an attempt to curtail the Court's progressive interpretation, reflecting a more restrained approach.

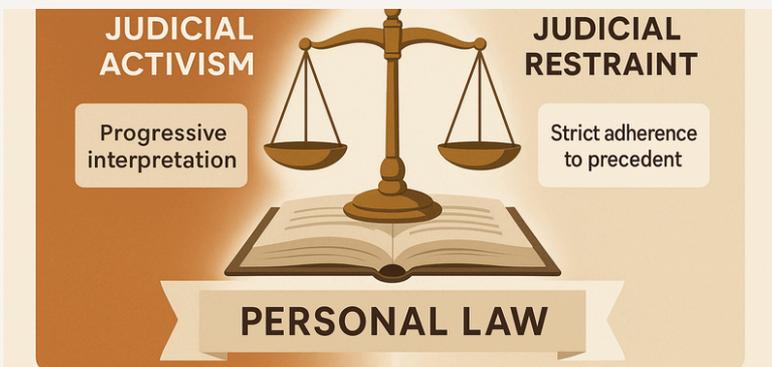
***Indian Young Lawyers Association & Ors. v. State of Kerala & Ors.***<sup>7</sup>: The Supreme Court's judgment allowing women of all ages to enter the Sabarimala temple challenged longstanding customs prohibiting menstruating women from doing so. This ruling was a bold act of judicial activism, sparking widespread debate and protests from traditional Hindu communities.

***Shayara Bano & Ors. v. Union of India & Ors.***<sup>8</sup>: The Supreme Court's decision to declare the practice of instant triple talaq unconstitutional was a significant step towards gender justice within the Muslim personal law framework. This judgment showcased the court's willingness to address discriminatory practices, despite the potential for backlash from conservative religious factions.

***M Siddiq (Dead) Through LRs v. Mahant Suresh Das & Ors.***<sup>9</sup>: The Supreme Court's verdict in the Ayodhya land dispute case, which awarded the disputed site to the Hindu parties, was viewed by some as a delicate balance between judicial activism and restraint. The court sought to address the long-standing conflict while also acknowledging the complex historical and religious dimensions of the issue.

### **Conclusion**

The delicate balance between judicial activism and judicial restraint in personal laws continues to be a significant challenge for the Indian judiciary. While the courts have played a crucial role in promoting gender equality, individual rights, and social justice, they have also had to navigate the complex terrain of religious customs, cultural diversity, and the separation of powers. As India continues to evolve, the discourse



surrounding personal laws must address the inherent tensions between codification and customary practices requiring a collaborative effort involving the judiciary, the legislature, and civil society. The legal system can work towards ensuring that personal laws are aligned with the principles of justice, equality, and social progress<sup>10</sup>.

Moreover, sustained public engagement and legal literacy are essential to ensure that reforms in personal laws reflect the lived realities of the communities they govern. Grassroots activism, academic discourse, and inclusive policy-making can foster a more participatory approach to legal reform. By encouraging dialogue among stakeholders—especially marginalized voices—the legal system can move beyond mere top-down interventions and embrace a more democratic model of legal evolution<sup>11</sup>. This inclusive engagement will be vital in transforming personal laws into instruments that uphold constitutional morality while respecting pluralism and diversity. Surrounding personal laws are complex questions that must grapple with the inherent tensions between codification and customary practices. Codification, while providing clarity and uniformity, often risks flattening the diversity of lived traditions, thereby alienating communities

that view personal law as central to their cultural identity. Conversely, reliance on customary practices without codification can perpetuate regressive norms, create uncertainty, and deny individuals—especially women and marginalized groups—the protection of rights guaranteed under the Constitution. Striking a balance therefore requires a collaborative effort involving the judiciary, the legislature, and civil society. By working together, these institutions can ensure that personal laws are progressively interpreted and reformed in a manner consistent with the principles of justice, equality, and social progress, while simultaneously acknowledging India’s pluralistic social fabric.

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# LAW & RIDDLES

## If Laws Could Tweet

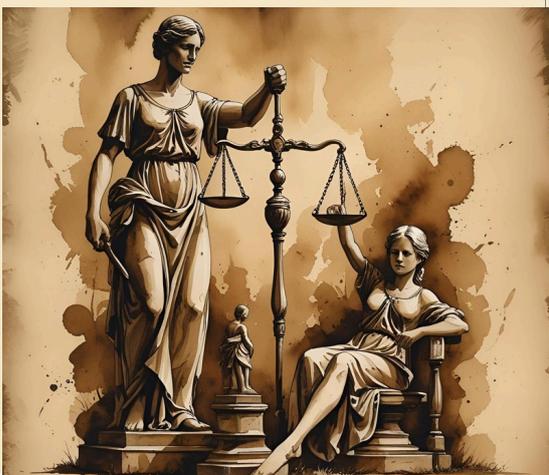
Uniform Civil Code isn't just Article 44—it's a conversation we've been postponing for decades.  
#OneNationManyLaws

Succession under Hindu Succession Act gave daughters equal rights—codified law catching up with constitutional equality.

## Question of the Edition

Can Article 25's freedom of religion override the State's power to implement the Uniform Civil Code under Article 44?

No — constitutional equality prevails over personal law practices.



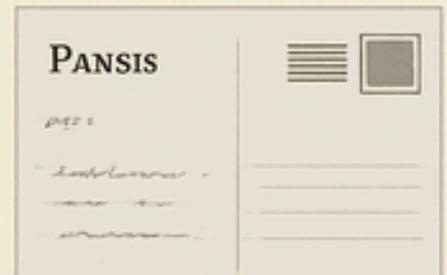
## Unseen, Unheard

**Parsis and personal law**  
Despite being one of India's smallest religious minorities, the Parsi Marriage and Divorce Act, 1936 remains under-discussed in debates on personal law reform.

**Tribal communities**  
Customary practices of tribal groups are often excluded from mainstream codification, leaving their voices unheard in legal reforms.

**Christian women**  
While much focus has been on Hindu and Muslim law, the slow reforms in the Indian Divorce Act, 1869 reveal long-neglected inequalities.

## Postcard Corner



Dear Lawmakers,  
We dream of personal laws that celebrate both equality and diversity, Where every marriage, inheritance, and family structure— be it Hindu, Muslim, Christian, Parsi, tribal, or secular—is governed with fairness, justice, and dignity.

Yours faithfully,  
**The Citizens of India**

## Concept of the Edition

### Concept:

*“Matrimonial Property Regime”*

➡ Refers to the system governing ownership, management, and division of property between spouses during and after marriage.

📌 Why it matters: Indian personal laws often lack clarity on joint